IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 5717 OF 2007

Messrs Vilas Transport Company & Anr. ..Petitioners
Vs.
Special Recovery Officer & Sales
Officer, Sangli Sahakari Bank Ltd. & Ors.Respondents.
Mr.J.P.Sen, Advocate, i/b. M/s. T.N.Tripathi &
Co.,Advocates for the the petitioners.
Mr. B.A.D'Lima i/b. M/s. D'Lima & Associates for
Respondent No.2.

CORAM: J.H.BHATIA,J.
DATE : 18th September, 2007

P.C.

Heard learned Counsel for the parties.

1. According to the respondent No.2, the petitioner No.1 had taken loan from the respondent No.2 Co-operative Bank. As they failed to make payment, the Bank has obtained recovery certificate under Section 101 of the Co-operative Societies Act and the property shown in the notice dated 31.7.2007 has been attached for recovery of the amount under the recovery certificate. The Special Recovery Officer issued proclamation for attachment whereby it was declared that the Special Recovery Officer would attach and take actual and physical possession of the properties mentioned therein. Against that proclamation, the petitioners have preferred this petition.

2. Petitioner No.1 is a partnership firm and petitioner No.2 is one of its partners. It is contended that the Special Recovery Officer has tried to execute the recovery certificates issued against the petitioners as well as the respondent No.3 by attachment and sale of the properties belonging to the petitioners. It is contended that the said properties cannot be attached and sold for recovery of the dues from the respondent No.3. It is further contended that the rules do not provide for taking physical possession after attachment. According to the petitioners, after attachment, the property can be put to sale, but without sale physical possession cannot be taken.

3. The learned Counsel for the respondents 1 and 2 makes a statement that the respondent No.1 has already attached the said property and has also put a notice to that effect on the conspicuous place of the property. He states that already the respondent No.1 has posted his security guard to protect the property. He also makes a statement that respondent No.1 has no intention to take physical possession of the property unless it is put to sale and sale is completed.

4. Now the only objection, that remains, is whether the property belonging to the petitioners can be attached and put to sale for recovery of the amount from respondent No.3. The learned Counsel for the respondents 1 and 2 has pointed out that the same property has been mortgaged with the respondent No.2 by the petitioner No.1 for the loan taken by the respondent No.3. As the said property is already mortgaged with

the respondent No.2 for the loan advanced to respondent No.3, the petitioners cannot take any objection for attachment and sale of the said property for recovery of the dues from the respondent No.3.

5. Taking into consideration the above circumstances, I find no merit in the petition. The petition stands dismissed, subject to the statement made by the learned Counsel for respondent Nos. 1 and 2 that they will not take physical possession of the property unless it is put to sale. The petitioners shall not remove the notice board fixed by respondent No.1 about attachment of the property nor they shall disturb the security guard posted by respondent No.1 outside the property for security.

Petition stands disposed of accordingly.

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(J.H.BHATIA,J.)